

CLAIM AMENDMENTS

1. (currently amended) A biopsy needle for obtaining a sample of tissue within the pleural cavity of a patient, said biopsy needle comprising

an outer tube having a closed distal end, a proximal end and a central canal therethrough, said distal end having a pair of oppositely disposed peripheral openings formed in said outer tube proximate the distal end thereof,

an inner movable member interfitted within said outer tube, said inner movable member having a distal end adapted to be located at about the distal end of said outer tube and a proximal end accessible to a user at the proximal end of said outer tube, said inner movable member being axially movable within said outer tube,

a pair of articulating members affixed to the distal end of said inner movable member, said articulating members being movable between a retracted position within said outer tube and an extended position where said articulating members extend outwardly through said peripheral openings in said outer tube, said pair of articulating members each having an operative surface facing the proximal end of said biopsy needle when in said extended position, wherein said operative surface of one of said articulating members has a brush edge thereon, whereby manipulation of said biopsy needle causes said operative surfaces to contact the pleural cavity of a patient to obtain tissue samples therefrom.

2. (previously presented) A biopsy needle as defined in claim 1 wherein said articulating members are moved between said retracted position and said extended position by manipulation of said proximal end of said inner movable member.

3. (previously presented) A biopsy needle as defined in claim 2 wherein said proximal end of said inner movable member extends axially outwardly from said proximal end of said outer tube so as to allow the manipulation of said proximal end of said inner movable member.

4. (previously presented) A biopsy needle as defined in claim 3 wherein said proximal end of said inner movable member is formed as an enlarged handle for

manipulation by a user.

5. (previously presented) A biopsy needle as defined in claim 1 wherein said closed distal end of said outer tube is pointed.

6. (original) A biopsy needle as defined in claim 1 wherein said outer tube has a longitudinal axis and said at least one articulating member moves outwardly to a position approximately 90 degrees to the longitudinal axis of said outer tube.

Claims 7-10. (canceled)

11. (currently amended) A biopsy needle as defined in claim 1 wherein ~~one of said articulating members has a cutting edge thereon and the~~ operative surface of the other of said articulating members has a ~~brush~~ cutting edge formed thereon.

12. (currently amended) A biopsy needle ~~as defined in claim 1 wherein~~ for obtaining a sample of tissue within the pleural cavity of a patient, said biopsy needle comprising

an outer tube having a closed distal end, a proximal end and a central canal therethrough, said distal end having a pair of oppositely disposed peripheral openings formed in said outer tube proximate the distal end thereof,

an inner movable member interfitted within said outer tube, said inner movable member having a distal end adapted to be located at about the distal end of said outer tube and a proximal end accessible to a user at the proximal end of said outer tube, said inner movable member being axially movable within said outer tube, wherein said closed distal end of said outer tube has an internal elongated opening, and said inner movable member has a needle shaped end that movably fits within said internal elongated opening to stabilize the axial movement of said inner movable member with respect to said outer tube

a pair of articulating members affixed to the distal end of said inner movable member, said articulating members being movable between a retracted position within said outer tube and an extended position where said articulating members extend outwardly through said peripheral openings in said outer tube, said pair of articulating members each having an

operative surface facing the proximal end of said biopsy needle when in said extended position whereby manipulation of said biopsy needle causes said operative surfaces to contact the pleural cavity of a patient to obtain tissue samples therefrom.

13. (currently amended) A biopsy needle for obtaining a sample of tissue within the pleural cavity of a patient, said biopsy needle comprising

an outer tube having a closed distal end, a proximal end and a central canal therethrough, said distal end having a pair of peripheral openings formed in said outer tube proximate the closed distal end thereof,

an inner movable member interfitted within said outer tube, said inner movable member having a distal end adapted to be located at about the distal end of said outer tube and a proximal end accessible to a user at the proximal end of said outer tube, said inner movable member being axially movable within said outer tube,

an end tube affixed to the distal end of said inner movable member, said end tube being T-shaped having a pair of upper legs, said end tube having two articulating members movable affixed thereto and extending from said upper legs of said T-shaped end tube, ~~movable affixed thereto and extending from said end tube,~~ said articulating members being movable between a retracted position within said outer tube and an extended position where said articulating members extend outwardly through said peripheral openings in said outer tube, said articulating members each having an operative surface facing the proximal end of said biopsy needle when in said extended position whereby manipulation of said biopsy needle causes said operative surfaces to contact the pleural cavity of a patient to obtain tissue samples therefrom.

14. (canceled)

15. (currently amended) A biopsy needle ~~as defined in claim 13~~ for obtaining a sample of tissue within the pleural cavity of a patient, said biopsy needle comprising

an outer tube having a closed distal end, a proximal end and a central canal therethrough, said distal end having a pair of peripheral openings formed in said outer tube proximate the closed distal end thereof,

an inner movable member interfitted within said outer tube, said inner movable member having a distal end adapted to be located at about the distal end of said outer tube and a proximal end accessible to a user at the proximal end of said outer tube, said inner movable member being axially movable within said outer tube,

an end tube affixed to the distal end of said inner movable member, wherein said end tube has an axial needle shaped end extending therefrom and said distal end of said outer tube has an elongated recess formed therein, said axially extending needle of said end tube adapted to slidingly interfit within said elongated needle to guide the axial movement of said inner movable member, said end tube having two articulating members movable affixed thereto and extending from said end tube, said articulating members being movable between a retracted position within said outer tube and an extended position where said articulating members extend outwardly through said peripheral openings in said outer tube, said articulating members each having an operative surface facing the proximal end of said biopsy needle when in said extended position whereby manipulation of said biopsy needle causes said operative surfaces to contact the pleural cavity of a patient to obtain tissue samples therefrom.

16. (previously presented) A biopsy needle as defined in claim 13 wherein said proximal end of said outer tube is sealed by an outer tube cover and wherein said proximal end of said inner movable member passes through the outer tube cover.

17. (currently amended) A biopsy needle as defined in claim 16 wherein said outer tube cover is threadedly affixed to the proximal end of said outer tube.

18. (original) A biopsy needle as defined in claim 16 wherein said outer tube cover has outwardly extending wings extending outwardly therefrom.

19. (previously presented) A biopsy needle as defined in claim 13 wherein said proximal end of said inner movable member is enlarged to form a handle to allow manipulation of said inner movable member by a user.

20. (previously presented) A biopsy needle as defined in claim 13 wherein said

inner movable member includes a stop means to limit the axial movement of said inner movable member outwardly from said outer tube.

21. (previously presented) A biopsy needle as defined in claim 20 wherein said stop means comprises a enlarged diameter member affixed to said inner movable member that engages said outer tube cover when said inner movable member is moved outwardly with respect to said outer tube.

Claims 22-23. (canceled)

24. (currently amended) A biopsy needle as defined in claim 13 for obtaining a sample of tissue within the pleural cavity of a patient, said biopsy needle comprising
an outer tube having a closed distal end, a proximal end and a central canal therethrough, said distal end having a pair of peripheral openings formed in said outer tube proximate the closed distal end thereof,

an inner movable member interfitted within said outer tube, said inner movable member having a distal end adapted to be located at about the distal end of said outer tube and a proximal end accessible to a user at the proximal end of said outer tube, said inner movable member being axially movable within said outer tube,

an end tube affixed to the distal end of said inner movable member, said end tube having two articulating members movable affixed thereto and extending from said end tube, said articulating members being movable between a retracted position within said outer tube and an extended position where said articulating members extend outwardly through said peripheral openings in said outer tube, said articulating members each having an operative surface facing the proximal end of said biopsy needle when in said extended position, wherein said at least one of said articulating members has an operative surface having a brush edge thereon whereby manipulation of said biopsy needle causes said operative surfaces to contact the pleural cavity of a patient to obtain tissue samples therefrom.

25. (currently amended) A biopsy needle as defined in claim 24 ~~13~~ wherein ~~one of said articulating member has a cutting edge thereon and the operative surface of the other of said articulating member~~ members has a ~~brush~~ cutting edge formed thereon.

26. (previously presented) A biopsy needle as defined in claim 13 wherein said outer tube has a flexible tube affixed at about the proximal end thereof, said flexible tube communicating with the interior area of said outer tube and having a connector affixed to a free end of said flexible tube to remove fluids from a patient.

27. (currently amended) A method of obtaining a sample of tissue from the pleural cavity of a patient, said method comprising the steps of:

providing a needle having a closed distal end with at least one articulating member having a brush edge formed thereon movable between a retracted position to an extended position extending outwardly from the needle proximate to the closed distal end of the needle,

inserting the needle into a patient such that the distal end of the needle is located within the pleural cavity of a patient,

extending the at least one articulating member outwardly from the needle,

adjusting the location of the needle to cause the articulating member to contact the parietal pleura of a patient,

rotating the needle to move the at least one articulating member to pick up a sample of the pleura onto the at least one articulating member,

retracting the at least one articulating member to the retracted position,

removing the needle from the patient to collect a sample of the pleura adhered to the at least one articulating member.

28. (canceled)

29. (previously presented) A method of obtaining a sample of tissue from the pleural cavity of a patient as defined in claim 27 wherein said step of providing a needle comprises providing a needle having a retracted position wherein said at least one articulating member is fully contained within the needle.

30. (previously presented) A method of obtaining a sample of tissue from the pleural cavity of a patient as defined in claim 27 wherein said step of providing a needle

comprises providing a needle having two articulating members

31. (currently amended) A method of obtaining a sample of tissue from the pleural cavity of a patient as defined in claim ~~27~~ ~~30~~ wherein said step of providing a needle comprises providing a needle having two articulating members with one articulating member having a knife edge formed thereon and the other articulating member having a brush edge formed thereon.

32. (canceled)

33. (canceled)

REMARKS

The Office Action dated July 6, 2004 had been read and carefully considered and the present amendment presented to amend the claims in accordance with the language allowed or indicated as allowable by the Examiner.

Claims 1-4 and 6 and 9 were rejected under 35 U.S.C. 102(b) as being anticipated by Rhum *et al.* Claims 27, 29 and 32 were rejected under 35 U.S.C. 102(b) as being anticipated by Ogirala. Claims 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Rhum *et al* as applied to claim 1. Claims 13, 16-23 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Rhum *et al* in view of Marini. Finally claim 26 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ogirala as applied to claim 27.

Claims 10-12, 14, 15, 24, 25, 31 and 33 were indicated as being allowable if rewritten in independent form to include all of the limitations of their base claims and any intervening claims. Applicant appreciates the indication of allowability of those claims.

Accordingly, Applicant has now amended all of the claims in the present application to be in accord with the claims that have been indicated as allowable. Specially, the limitation of claim 10, indicated as allowable, relating to "at least one of the articulating

members being a brush” has now been incorporated into claim 1 and it is, therefore submitted that claim 1 is now in allowable form. As such claims 2-6 are dependent upon claim 1 and are also therefore submitted to be allowable. Claim 10 has been canceled. Claim 12, also dependent upon claim 1, has been amended to make the language of that claim consistent with the cancellation of claim 10.

Claim 12 that was also considered to be allowable if rewritten in independent form has now been rewritten in independent form by combining all of the language of claim 1 into the additional limitations of claim 12.

Claim 13 has now been rewritten to include the limitations of claim 14, also considered to be allowable if rewritten in independent form, such that claim 13 is now in accord with the rewriting of claim 14 in independent form. With that amendment to claim 13, claim 14 has now been canceled.

Claim 15 was also indicated as being allowable if rewritten in independent form and, therefore, the amendments has been made to claim 15 so that it now has all of the limitations of the prior claim 13 while retaining the limitations of claim 15. Claims 16-21 have been amended to depend either directly or indirectly upon the claim 13 which, as indicated, has been amended to be in allowable form.

Claims 22-23 have been cancelled.

Claim 24 that was indicated as allowable if rewritten in independent form has now been so rewritten by incorporating all of the limitations of claim 13 into claim 24 while retaining the limitations of claim 24.

Claim 25 has been amended to depend from claim 24 in view of the amendments to claim 24.

The limitations of claim 28 relating to the presence of a brush edge formed on at least one articulating member has now been added to claim 27 and it is thus submitted that claim

27 is in allowable form. The remaining claims, that is, claims 29-31 are all now made dependent upon claim 27, and are therefore also now in allowable form.

As such with the foregoing amendments it is believed that all of the claims indicated by the Examiner as being allowable have now been rewritten or amended to be in accord with that allowable subject matter and an allowance of the present application is respectfully solicited. If there are any amendments that the Examiner finds are not in accord with the allowable subject matter, it is requested that the Examiner call the undersigned attorney so that the issues can be resolved expeditiously.

Respectfully submitted,



Roger M. Rathbun

Attorney for Applicant